



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

William J. McGinley, Esquire
Patton Hoggs LLP
2550 M Street, NW
Washington, DC 20007

JUN 17 2010

RE: MUR 6244
Charlie Crist for US Senate and
Frederick Carroll III, in his official
capacity as treasurer

Dear Mr. McGinley:

On December 29, 2009, the Federal Election Commission notified your clients, Charlie Crist for U.S. Senate and Frederick Carroll III, as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. On May 27, 2010, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe your clients violated 2 U.S.C. §§ 441a(f) or 441b. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact April Sands, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 6244

RESPONDENTS: Charlie Crist for U.S. Senate and Frederick Carroll III,
in his official capacity as treasurer

I. INTRODUCTION

The complaint alleges that lobbyist Richard Heffley and an unnamed collaborator launched a website on October 27, 2009, that attacked U.S. Senate candidate Marco Rubio, the Republican primary opponent of Governor Crist at that time. The complaint claims that, because Mr. Heffley is a "common vendor" for the website, <http://truthaboutrubio.com>, and for Charlie Crist for U.S. Senate ("Crist Committee"), the website is a coordinated communication in violation of the Federal Election Campaign Act of 1971, as amended ("the Act"). Further, the complaint alleges that if Mr. Heffley used his lobbying corporation or political consulting group to pay for the website, then the coordination would have constituted an illegal corporate contribution to the Crist Committee. The complaint further alleges that Mr. Heffley is a paid consultant of the Republican Party of Florida and that he shares office space with the Crist Committee and the Republican Party of Florida. Because it does not appear that any costs associated with the truthaboutrubio.com website are in-kind contributions to the Crist Committee, the Commission finds no reason to believe that Charlie Crist for U.S. Senate and Frederick Carroll III, in his official capacity as treasurer, violated 2 U.S.C. §§ 441a(f) or 441b.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 The Act limits the amount that may be contributed to Federal candidates, their authorized
3 committees, and to other political committees, and prohibits candidates and political committees
4 from accepting contributions in violation of those limits. *See* 2 U.S.C. §§ 441a(a) and 441a(f).
5 The Act also prohibits corporations from making federal political contributions. 2 U.S.C.
6 § 441b. Under the Act and the Commission's regulations, these contributions may take the form
7 of money or "anything of value," the latter signifying "in-kind" contributions. *See* 2 U.S.C.
8 § 431(8)(A)(i) and 11 C.F.R. § 100.52(d)(1). When a person pays for a communication that is
9 coordinated with a candidate or party committee, the communication is considered an in-kind
10 contribution from the person to that candidate or party committee and is subject to the limits,
11 prohibitions and reporting requirements of the Act, unless exempted under 11 C.F.R. part 100,
12 subpart C or E. *See* 11 C.F.R. § 109.21(b). One of the specific exemptions contained in subpart
13 C is uncompensated internet activity by individuals including, for example, "creating, hosting or
14 maintaining a website," which is not included in the definition of "contribution." 11 C.F.R.
15 § 100.94.

16 In general, a payment for a communication is "coordinated" if it is made in cooperation,
17 consultation or concert with, or at the request or suggestion of, a candidate, a candidate's
18 authorized committee or their agents, or a political party committee or its agents. *See* 2 U.S.C.
19 § 441a(a)(7)(B); 11 C.F.R. §§ 109.21 and 109.37. Commission regulations establish a
20 three-prong test to determine whether a communication is coordinated. All three prongs of the
21 test — payment, content and conduct — must be met for a communication to be deemed
22 coordinated and, thus, an in-kind contribution. The available information indicates that

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1 Mr. Heffley created and paid for the website, the costs of which were minimal, and that the Crist
2 committee did not pay the costs. However, it appears that truthaboutrubio.com fails the content
3 prong of the test for a coordinated communication. To satisfy the content prong, a
4 communication has to be either an "electioneering communication" or a "public
5 communication," see 11 C.F.R. §§ 109.21(e)(1)-(4) and 109.37(a)(2)(i)-(iii), and this website
6 appears to be neither.¹ Therefore, the content prong is not met, and the truthaboutrubio.com
7 website cannot be a coordinated communication, as alleged in the complaint.

8 Further, the Commission's regulations regarding individual volunteer activity over the
9 internet appear to exempt the costs of the website from the definition of "contribution." The
10 available information indicates that Mr. Heffley served as an unpaid blogger who coordinated
11 with no one on the Crist Committee and created the content on the website on his own from
12 previously published materials. The Commission's internet regulations provide that volunteer
13 internet activities by an individual or group of individuals, "acting independently or in

¹ An electioneering communication is defined as a broadcast, cable or satellite communication that refers to a clearly identified federal candidate and is distributed to the relevant electorate 30 days before the primary election or 60 days before the general election. 11 C.F.R. § 100.29. The website was launched on October 27, 2009, more than 30 days before the primary election date of August 24, 2010. Further, "broadcast, cable, or satellite communication" means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system. 11 C.F.R. § 100.29. Accordingly, the website is not an electioneering communication.

Nor is <http://truthaboutrubio.com> a public communication. "Public communication," see 11 C.F.R. §§ 109.21(e)(2)-(4) and 109.37(a)(2)(i)-(iii), is defined as a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising, which in turn is defined to exclude communications over the internet except for communications placed for a fee on another person's website. 11 C.F.R. § 100.26. The available information does not suggest that the Crist Committee paid any fees in connection with truthaboutrubio.com. The response from the Crist Committee states that Mr. Heffley and his companies do not receive any compensation from the Crist Committee for any services. Crist Committee Response at 1. The Crist Committee did not disclose any payments to Heffley or to any person described in a manner suggesting the website at issue. Because the available information does not indicate that material was placed on the website for a fee, the website does not appear to be a public communication.

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1 coordination with any candidate, authorized committee, or political party committee" is not a
2 contribution by that individual or group of individuals. 11 C.F.R. § 100.94; *see also* Internet
3 Communications Explanation and Justification, 71 Fed. Reg. 18589, 18603 (April 12, 2006) (the
4 funds expended by individuals engaging in volunteer internet activities and bloggers to create
5 and maintain websites do not constitute contributions or expenditures, and the websites
6 themselves are not subject to the Commission's coordination rules). Therefore, it seems that
7 Mr. Heffley's activity falls squarely into the internet exemption and is not an in-kind
8 contribution to the Crist Committee.² As a result, the Commission finds no reason to believe
9 that Charlie Crist for U.S. Senate and Frederick Carroll III, in his official capacity as treasurer,
10 violated 2 U.S.C. §§ 441a(f) or 441b by accepting excessive or prohibited in-kind contributions.³

² The complaint alleges that Mr. Heffley launched the website with an "undisclosed collaborator." According to the complaint, Mr. Heffley admitted the existence of a collaborator to a reporter but failed to name him/her. However, even if the undisclosed collaborator exists and is a member of the Crist Committee, the Commission's regulations still appear to exempt the website activity from the definition of "contribution." *See* 11 C.F.R. § 100.94.

³ There are broad allegations in the complaint that Mr. Heffley may have used one or both of his corporations, Heffley and Associates, Inc. and Strategic Direction.com, Inc., to pay for <http://truthaboutrubio.com>, resulting in impermissible corporate contributions. The available information does not suggest any corporate involvement in the website. *See* 2 U.S.C. § 441b(a).

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